

1 **CROSBY & FOX, LLC**  
David Crosby, Esq.  
2 Nevada Bar No. 3499  
Troy Fox  
3 Nevada Bar No. 11127  
711 S. Eighth St.  
4 Las Vegas, NV 89101

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

5  
6  
7 In re: ) Case No.: 13-16057-mkn  
8 Nancy A. Licata, ) CH: 13  
9 Debtor. ) Trustee: Rick A. Yarnall  
10 ) Hearing Date: 11/21/2013  
11 ) Hearing Time: 3:15 p.m.

12 **MOTION TO VALUE DEBTOR'S PRINCIPAL RESIDENCE AND AVOID WHOLLY**  
13 **UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF**  
14 **LIENHOLDER(S) AND OBJECTION TO LEINHOLDER(S) PROOF(S) OF CLAIM IF**  
15 **ANY**

16 COME NOW Debtor Nancy Licata by and through her attorney of record Crosby &  
17 Fox, LLC and moves this Court to value the Debtor's principal residence, determine the  
18 second lien of Dreambuilder Investments, LLC, to be wholly unsecured and to modify the  
19 rights of said creditor accordingly including determining the claim (pursuant to any proof  
20 of claim which such lien holder may file) to be unsecured where there is insufficient equity  
21 in the residence to secure more than the first lien.

22 This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2) and  
23 Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and the  
24 documents and pleadings on file herein.

25 DATED this 7<sup>th</sup> day of October, 2013.

26 **Crosby & Fox, LLC**

27 /s/ Troy S. Fox  
28 Troy S. Fox  
Nevada Bar No. 11127  
Attorney For Debtor

**Crosby & Fox, LLC**  
711 S. 8<sup>th</sup> St., Las Vegas, NV 89101  
Ph: (702) 382-1007 Fax (702) 382-1921

MEMORANDUM OF POINTS AND AUTHORITIES

I.  
STATEMENT OF FACTS

1. Debtor filed a Chapter 13 petition in the United States Bankruptcy Court, District of Nevada on July 11, 2013.

2. On the date of the petition, Debtor was the owner of real property used as her principal residence known and described as 3385 El Camino Real, Las Vegas, NV 89121 (As Shown in Schedules) the property being legally described as follows:

Lot Twenty (20) of Block Two (2) of Paradise Manor Tract 1,  
as shown by map thereof on file in Book 9 of Plats, Paged 10,  
in the office of the County Recorder of Clark County, Nevada.  
APN: 161-18-113-025

3. The value of said principal residence at the time their Chapter 13 Petition was filed was \$144,390.00 as set forth more particularly in an internet appraisal of subject property (Exhibit "1").

4. Said property at the time of filing was subject to the following liens allegedly evidenced by Promissory Notes and Deeds of Trust:

First Mortgage: (Claim NONE FILED)

Fannie Mae	\$ 280,844.00
c/o Nation Star Mortgage	
350 Highland Drive	
Lewisville, TX 75067	

Junior Mortgage: (Claim # NONE FILED) (Exhibit "2")

Drambuilder Investments, LLC	\$ 67,075.00
c/o GMAC Mortgage, LLC	
3451 Hammond Ave.	
Mail Code 507-345-186	
Waterloo, IA 50702	

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5. As of the date Debtor's Chapter 13 Petition was filed no equity existed in said property above the claim of the First Mortgage identified above. The claim of the Junior Mortgage holder identified above is wholly unsecured on the date of the Petition and if said property were foreclosed or otherwise sold at auction on that date there would be insufficient proceeds to pay anything to the Junior Mortgage.

6. Debtor declares that the Junior Mortgage listed above is unsecured and should be reclassified as unsecured to share pro rata with other general unsecured creditors through the debtor's Chapter 13 plan with any proofs of claim filed by it or its successor or assigns be modified accordingly to document the claim as unsecured, and that proofs of claim filed by the Junior Mortgage listed above or their successors be or assigns be wholly avoided, and any liens of the Junior Mortgage which are encumbering subject property be properly avoided by Order of this Court.

## II.

### LEGAL ARGUMENT

**A. A Wholly Unsecured Lien Encumbering Debtor's Principal Residence May be Avoided Because Modification is Authorized/Not Prohibited by 11 U.S.C. § 1322(b)(2).**

11 U.S.C. §1322(b)(2) provides in pertinent part:

(b) Subject to subsections (a) and (c) of this section, the plan may—

\* \* \* \* \*

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence, .....

The Junior Mortgage Holder identified above has no security in Debtors' residence based on the fair market value of the property and as a result are not a "secured claim" as defined and therefore not restricted by this section.

**B. The Claim by Lienholder May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).**

11 U.S.C. § 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition.

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2).

**C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.**

11 U.S.C. § 502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors herewith have objected to any and all Proofs of Claim which have been or may be filed by the Junior Mortgage Holder listed above and its successors and assigns, pursuant to its junior lien and request that any Proof(s) of Claim of same representing such claim be modified accordingly to unsecured claims consistent with the Order of this Court determining the claim(s) of the Junior Mortgage to be wholly unsecured, and its lein(s) to be wholly avoided upon Debtor's completion of their Chapter 13 plan, and receipt of Discharge.

III.

CONCLUSION

1 Debtor respectfully requests determination of value of Debtor's primary residence  
2 to be less than the amount of the first lien and argues that since the junior claims of  
3 Dreambuilder Investments, LLC, or its successors or assigns is wholly unsecured and it  
4 may be avoided and "stripped off" pursuant to 11 U.S.C. §1322(b)(2) and §506(a); that  
5 the said junior claim(s) of Junior Mortgage Holder be reclassified as general unsecured  
6 claim(s) to be paid pro rata with other general unsecured creditors through the debtor's  
7 Chapter 13 plan and that any Proof(s) of Claim of the lienholders be modified  
8 accordingly.

9 WHEREFORE, Debtor prays that this Court:

10 1. Determine the value of Debtor's principal residence to be \$ 144,390.00 or  
11 such other amount as may be less than the balance of the first lienholder as of the date  
12 of the Petition; and

13 2. Avoid the lien of Dreambuilder Investments, LLC, Junior Mortgage holder  
14 pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtor's Chapter 13 plan;  
15 and

16 3. Reclassify the Junior Mortgage claim(s) as general unsecured claim(s) to  
17 be paid pro rata with other general unsecured creditors through the Debtor's Chapter 13  
18 plan.

19 4. Conform any Proofs of Claim filed by Junior Mortgage Holder or its  
20 successors or assigns pursuant to its junior lien to unsecured status as determined by  
21 this Court.

22 5. Order such other relief as the Court may deem appropriate.

23  
24 DATED this 7<sup>th</sup> day of October, 2013.

25 Crosby & Fox, LLC

26 /s/ Troy S. Fox  
27 Troy S. Fox  
28 Nevada Bar No. 11127  
Attorney For Debtor

Crosby & Fox, LLC  
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# **EXHIBIT 1**

**3385 El Camino Real, Las Vegas, NV 89121****Not for Sale**

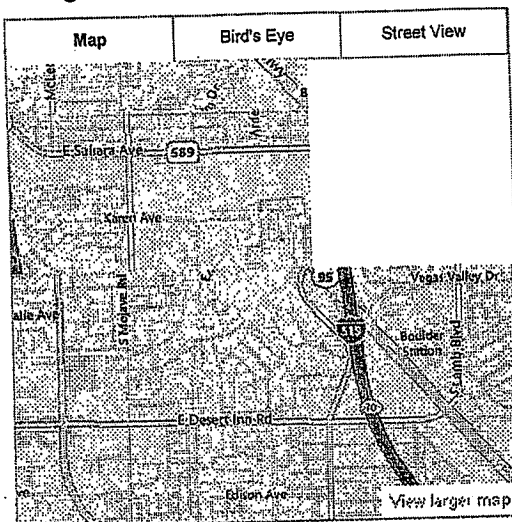
Zestimate: \$144,390

Rent Zestimate: \$1,222/mo

Est. Refi Payment: \$555/mo

See current rates on Zillow  
Get Prequalified

Bedrooms: 3 beds  
 Bathrooms: 2 baths  
 Single Family: 2,332 sq ft  
 Lot: 8,712 sqft  
 Year Built: 1963  
 Last Sold: Jun 2002 for \$160,000  
 Heating Type: Forced air



Correct home facts

Save this home

Get updates

Email

more ▾

**Description**

This 2332 square foot single family home has 3 bedrooms and 2.0 bathrooms. It is located at 3385 El Camino Real Las Vegas, Nevada.

Cooling Central	Parking Unknown	Basement Type Unknown
Fireplace Yes	Floor Covering Unknown	Attic Unknown

▾ More    County website    See data sources

**Zestimates**

	Value	Range	30-day change	\$/sqft	Last updated
Zestimate	\$144,390	\$105K - \$199K	+\$10,730	\$61	10/03/2013
Rent Zestimate	\$1,222/mo	\$1.1K - \$1.5K/mo	-\$20	\$0.52	09/30/2013

Owner tools    Post your own estimate

Market guide    Zillow predicts 89121 home values will rise 10.2% next year, compared to a 9.2% rise for Las Vegas as a whole. Among 89121 homes,...

[more](#)

Zestimate | Rent Zestimate | more ▾

1 year | 5 years | 10 years

This home  
Las Vegas

**Contact a local agent**

- ☒ **Kirby Scofield**  
(24 reviews)  
Call: (702) 802-0898
- ☐ **Jesus Lucuara**  
(5 reviews)  
Call: (702) 856-9429
- ☐ **Sarah Terry**  
(8 reviews)  
Call: (702) 979-2328

Your Name

Phone

Email Address

I would like a professional estimate of my home at 3385 El Camino Real, Las Vegas, NV 89121.

**Contact Agent**

Learn how to appear as the agent above

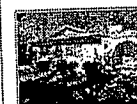
**Move into a home you love with a mortgage from USAA Bank.**

[Explore Home Loans](#)

**Similar Homes for Sale****3101 Greenbriar Dr. Las...**

For Sale: \$158,000

Beds: 3    Sqft: 2241  
 Baths: 2.0    Lot: 8,276

**3542 S Pecos Rd. Las V...**

For Sale: \$135,000

Beds: 3    Sqft: 1488  
 Baths: 2.0    Lot: 8,712

**3373 Horizon St. Las Ve...**

For Sale: \$188,000

Beds: 5    Sqft: 1740  
 Baths: 3.0    Lot: 6,534

See listings near 3385 El Camino Real

**Price History**

View Your 2013 Credit Score Instantly for \$0

Date	Description	Price	Change	\$/sqft	Source	
06/28/2002	Sold	\$160,000	--	\$68	Public Record	<input type="checkbox"/>
03/15/1996	Sold	\$160,000	--	\$68	Public Record	<input type="checkbox"/>

**Tax History**

Find assessor information on the county website

Year	Property taxes	Change	Tax assessment	Change
2013	\$806	--	\$32,381	17.9%
2012	\$806	-10.4%	\$27,463	-10.4%
2011	\$900	-0.6%	\$30,662	-0.3%

More

**Monthly Payment**

Mortgage payment breakdown for the home price of \$144,390

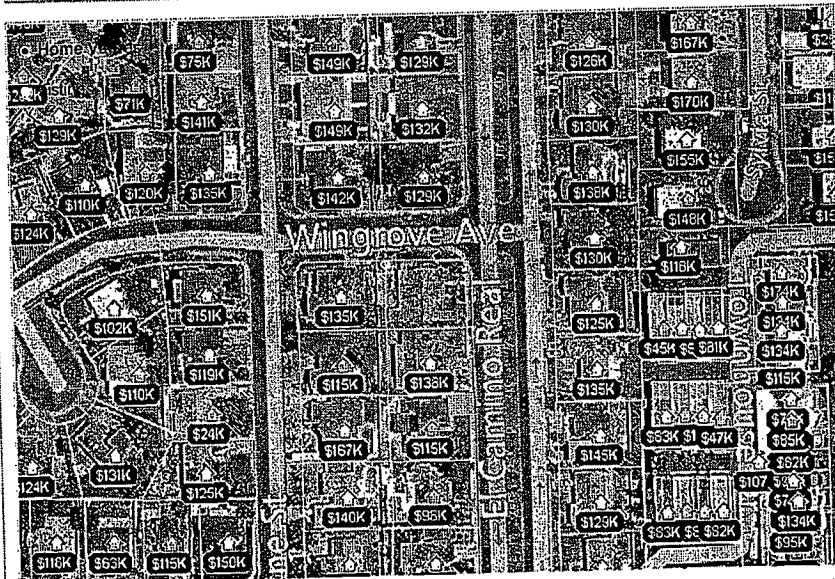
**Percent down:**20% (\$28,878) ☐**Program:**30yr fixed 4.053% ☐**Credit Score:**760 and above ☐

<b>Estimated Payment</b>	<b>\$703</b>
<input type="checkbox"/> Principal & Interest	\$555
<input type="checkbox"/> Taxes	\$90
<input type="checkbox"/> Homeowners Insurance	\$58
<input type="checkbox"/> Mortgage Insurance	\$0

See personalized rates

**Neighborhood**

View larger map



Walk Score™ 40/100 (Car-Dependent)

List of nearby homes

Worst Best

## **EXHIBIT 2**

# Dreambuilder Investments, LLC

## MORTGAGE LOAN TRANSFER DISCLOSURE NOTICE

In this Notice, the terms "we", "us" or "our" mean the new creditor identified below. The terms "you" and "your" mean the mortgage loan borrower(s) identified below.

We are sending you this Notice because we are required by law to notify you that your mortgage loan identified below has been sold or transferred to us. We are the new creditor of your mortgage loan.

**Date of this Notice:** October 4, 2011

**Mortgage Loan Borrower Name(s):** NANCY A. LICATA

**Property Address:** 3385 EL CAMINO REAL  
LAS VEGAS, NV 89121-3424

**Mortgage Loan Information:**

**Date of Loan:** April 13, 2004

**Original Amount of Loan:** \$69,000.00

**Address of Mortgaged Property:** 3385 EL CAMINO REAL  
LAS VEGAS, NV 89121-3424

**Mortgage Identification Number (MID):** 1001083-0000002682-6

*Please note the following information regarding the transfer of your mortgage loan:*

1. The identity (name), address and telephone number of the new creditor:

Dreambuilder Investments, LLC  
30 Wall Street  
New York, Ny 10005-2214  
6th Floor  
(866) 561-5600  
<http://www.dreambuilder.net>

2. The date of the transfer of your mortgage loan: September 26, 2011

3. How to reach an agent or party having authority to act on behalf of the new creditor:

- (i) The mailing address and telephone number for the mortgage company servicing your mortgage loan, with authority to resolve issues concerning borrower payments on the loan, is:

GMAC Mortgage, LLC  
3451 Hammond Ave  
Mail Code 507-345-186  
Waterloo, Ia 50702  
(800) 766-4622  
(800) 766-4622  
<http://www.gmacmortgage.com>

You can also look up the current servicer of your mortgage loan by accessing MERS® Servicer ID at [www.mers-servicerid.org](http://www.mers-servicerid.org), or by dialing the toll-free MERS® Servicer Identification System at 888-679-6377.

- (ii) The mailing address and telephone number for the agent authorized to receive legal notice is:

Mortgage Electronic Registration Systems, Inc.  
P.O. Box 2026  
Flint, MI 48501-2026  
Ph: (888) 679-6377



4. The instrument representing the indebtedness of your mortgage loan (promissory note) is not a recordable document, but the promissory note is in our possession or held on our behalf by our custodian. The security instrument (mortgage or deed of trust) that secures the repayment of your promissory note is, however, recorded in the public land records for CLARK, NV.
5. Additional information:

**This Notice does not identify or otherwise change the address where you send your mortgage loan payments.**

If there is any change in the address for your mortgage loan payments, you will be notified of such change separately and apart from this notice.



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Attorneys for Debtor(s)

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

Nancy A. Licata,

Debtor.

Case No.: 13-16057-mkn

CH: 13

Trustee: Rick A. Yarnall

Hearing Date: 11/21/2013

Hearing Time: 3:15 p.m.

**ORDER GRANTING**

**MOTION TO VALUE DEBTOR'S PRINCIPAL RESIDENCE AND AVOID WHOLLY  
UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF  
LIENHOLDERS AND OBJECTION TO LIENHOLDERS'  
PROOFS OF CLAIM, IF ANY**

Debtor's MOTION TO VALUE DEBTOR'S PRINCIPAL RESIDENCE AND AVOID  
WHOLLY UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS  
OF LIENHOLDER(S) AND OBJECTION TO LEINHOLDER(S) PROOF(S) OF CLAIM IF  
ANY having been duly filed and served on all appropriate parties and having come before

1 this Court for hearing on the date and at the time set forth above with Debtor appearing  
2 by and through his legal counsel, Crosby & Fox, LLC and none of the named lienholders/  
3 lenders/servicers having appeared or otherwise having responded and good cause  
4 appearing therefore;

5 THE COURT HEREBY FINDS:

6 1. On the date of the petition, Debtor was the owner of real property used as  
7 his principal residence known and described as 3385 El Camino Real, Las Vegas, NV  
8 89121 legally described as follows:

9 Lot Twenty (20) of Block Two (2) of Paradise Manor Tract 1,  
10 as shown by map thereof on file in Book 9 of Plats, Paged 10,  
11 in the office of the County Recorder of Clark County, Nevada.

12 APN: 161-18-113-025

13 2. The value of said principal residence at the time Debtor filed his Chapter 13  
14 Petition was \$144,390.00 which is less than the balance of the claim(s) of the first  
15 lienholder as of the date of the Petition.

16 3. Said property at the time of filing was subject to the following liens:

17 First Mortgage: (Claim NONE FILED)

18 Fannie Mae \$ 280,844.00  
19 c/o Nation Star Mortgage  
20 350 Highland Drive  
21 Lewisville, TX 75067

22 Junior Mortgage: (Claim # NONE FILED)

23 Drambuilder Investments, LLC \$ 67,075.00  
24 c/o GMAC Mortgage, LLC  
25 3451 Hammond Ave.  
26 Mail Code 507-345-186  
27 Waterloo, IA 50702

28 4. That on the filing date of the instant Chapter 13 petition, the claims  
represented by the Junior Mortgage Holder was wholly unsecured and may therefore be

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1 avoided pursuant to 11 U.S.C. Section 506(a) and §1322(b)(2) upon completion of the  
2 Debtor's Chapter 13 plan; and

3 5. Said claim is properly reclassified as a non-priority general unsecured claim  
4 to be paid pro rata with other non-priority general unsecured creditors through the  
5 Debtor's Chapter 13 plan; and

6 6. That it is consistent with the above findings that any claim(s) as identified in  
7 Proofs of Claim(s) filed by Junior Mortgage Holder or its successor or assigns be  
8 modified to non-priority general unsecured status.

9 IT IS THEREFORE ORDERED THAT:

10 1. The liens represented by the claim of the Junior Mortgage of Dreambuilder  
11 Investments, LLC be and are herewith avoided and "stripped off" from Debtors' principal  
12 residence upon completion of Debtor's Chapter 13 plan and the claims of Junior  
13 Mortgage shall henceforth be treated as a "non-priority general unsecured claim"  
14 pursuant to 11 U.S.C. §506(a);

15 2. That any Proofs of Claim filed by Junior Mortgage Holder or its successors  
16 or assigns be conformed to the findings herein as non-priority general unsecured claims  
17 to be paid pro rata with other non-priority general unsecured creditors through the  
18 Debtor's Chapter 13 plan.

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1           3. Junior Mortgage Holder shall retain its claim for the full amount under the  
2 loans referenced above in the event of either the dismissal of Debtor's Chapter 13 case  
3 or the conversion of the Debtor's Chapter 13 case to any other Chapter under the United  
4 States Bankruptcy Code.

5           DATED this 7<sup>th</sup> day of October, 2013.

6  
7 Submitted By:

8 CROSBY & FOX, LLC

9  
10  
11 /s/ Troy S. Fox

12 David M. Crosby, Esq.  
13 Nevada Bar #3499  
14 CROSBY & FOX, LLC  
15 711 South Eighth Street  
16 Las Vegas, Nevada 89101  
17 Attorneys for Debtor  
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**LR9021 Certification**

In accordance with LR 9021, counsel submitting this document certifies as follows:

\_\_\_ The court has waived the requirement set forth in LR 9021(b)(1).

\_\_\_ No party appeared at the hearing or filed an objection to the motion.

\_\_\_ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

\_\_\_ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Submitted By:

CROSBY & FOX, LLC

/s/ Troy S. Fox

David M. Crosby, Esq.  
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Attorneys for Debtor